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Deal JB 5/12/03
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Randal J. Jolitz

Serial No.: 09/865,403

Filed: May 25, 2001

For: COMPOSITE SHINGLE

Group Art Unit: 3635

Examiner: Safavi, M.

Atty. Dkt. No.: EPOC:009/MTG

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DECLARATION OF STAN P. FRANKOSKI

I, Stan P. Frankoski, declare under penalty of perjury that:

GROUP 3600

1. I am over 18 years old and have personal knowledge of the facts below.
2. I am Corporate Director of Research and Development for TAMKO Roofing Products, Inc.
3. I have held this position for ten (10) years. As Corporate Director of R&D, my duties include directing all aspects and phases of the research and development efforts of TAMKO concerning new products and processes.
4. I received a BS in Chemistry from Villanova University, an MS in Chemistry from Purdue University, and a PhD in Chemistry from the University of Massachusetts (Amherst).
5. I have read the patent application, including the version of the claims that were examined by the Patent Office when it issued the final Office Action, as well as the amended version of the claims set forth in the response to the final Office Action.
6. I have also read the final Office Action and U.S. Patent Nos. 6,214,924 (Bieser), 6,112,492 (the '492 patent), and 5,711,126 (the '126 patent).

Bieser

7. In the final Office Action, the Patent Office states that Bieser "discloses a tile formed of a composition mixture of about 36 to 64% polyethylene and about 36 to 64% crushed limestone" and cites column 8, lines 8-45 and column 11, lines 50-52 of Bieser.
8. Neither of these two cited sections of Bieser pertains to a polyethylene within the claimed range of about 36 to 64% of claim 1. The first cited section of Bieser –

column 8, lines 8-45 – pertains to the fillers disclosed in Bieser. The second cited section – column 11, lines 50-52 – pertains to “Comparative Example 1” of Bieser, which concerns a composition that includes 85% filler and 15% of another material (i.e., “Polymer A”).

9. The Patent Office apparently believes that Bieser’s references to a “polyethylene composition” are sufficient to qualify as the claimed polyethylene. This is simply not the case.
10. Bieser states that the generic “polyethylene composition” in the patent comprises a certain percentage of “at least one homogeneous ethylene/ α -olefin interpolymer”, a certain percentage of “at least one filler”, and a certain percentage of “at least one functionalized polyethylene.” See, for example, col. 2, lines 23-40.
11. The homogeneous ethylene/ α -olefin interpolymer of Bieser’s “polyethylene composition” is not the claimed polyethylene.
12. Bieser specifically defines “interpolymer” as “a copolymer, or a terpolymer, or the like. That is, at least one other comonomer is polymerized with ethylene to make the interpolymer.” Col. 7, lines 53-56. A group of polymers that has been explicitly restricted to copolymers does not disclose or suggest polyethylene.
13. Bieser also states that “[t]he homogeneous ethylene/ α -olefin interpolymer may be a homogeneously branched linear polymer or a substantially linear polymer, with substantially linear polymers being preferred.” Col. 4, lines 16-19.
14. In the next paragraph, Bieser states: “‘Substantially linear’ ethylene/ α -olefin interpolymers are not ‘linear’ polymer [sic] in the traditional sense of the term, as is used to describe linear low density polyethylene (Ziegler polymerized linear low density polyethylene (LLDPE)). Nor is the term ‘substantially linear’ interpolymers used to describe highly branched polymers, such as low density polyethylene (LDPE).” Col. 4, lines 31-37. LLDPE and LDPE are both types of polyethylene.
15. Bieser’s statements show that Bieser’s homogeneous ethylene/ α -olefin interpolymer does not include polyethylene.

The ‘126 Patent

16. In the final Office Action, the Patent Office states that “Wells [i.e., the ‘126 patent] discloses a tile formed of a composition mixture of about 36 to 64% polyethylene” This is not correct.
17. The ‘126 patent discloses “polyester, polyethylene terephthalate (PET), polycarbonate, and polypropylene resins” as examples “of materials that are

resinous and suitable for use with the invention.” Col. 7, lines 35-42. Neither polyester, PET, polycarbonate nor polypropylene teaches or suggests polyethylene as claimed in claim 1.

18. These substances – including PET – are simply not the same as or suggestive of polyethylene.

The ‘492 Patent

19. In the final Office Action, the Patent Office states that “Wells et al. [i.e., the ‘492 patent] discloses a tile formed of a composition mixture of about 36 to 64% polyethylene” This is not correct.
20. The ‘492 patent, like the ‘126 patent, discloses “polyester, polyethyleneterephthalate (PET), polycarbonate, and polypropylene resins” as examples “of materials that are resinous and suitable for use with the invention.” Col. 6, lines 54-56.
21. Neither polyester, PET, polycarbonate nor polypropylene teaches or suggests polyethylene as claimed in claim 1. These substances – including PET – are simply not the same as or suggestive of polyethylene.

Signed: _____

Dated: _____

Name: Stanley P. Frankoski

Title: Corporate Director, Research and Development